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In the Supreme Court of the United States

OCTOBER TERM, 1945

JACK PARKER ET AL., PETITIONERS

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 74–87) has not yet been reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on March 13, 1946 (R. 88). The petition for a writ of certiorari was filed on April 8, 1946. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act, c. 26, 56 Stat. 23, as amended, 50 U. S. C. App., Supp IV, 924 (d),

(herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

Whether under Section 203 (a) of the Act a tenant may file a protest against, and obtain judicial review of, an order of the Price Administrator, authorizing the owner of particular rented property to proceed to enforce whatever right he may have at local law to evict the tenant.

Whether the Fifth Amendment requires that the tenant be permitted to file such a protest and obtain such judicial review.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, appear in the Appendix, *infra*, pp. 16–20. The Rent Regulation for Housing and Revised Procedural Regulation No. 3, Procedure for Adjustments, Amendments, Protests and Interpretations under Rent Regulations, appear in the Federal Register (10 F. R. 3436; 8 F. R. 526).

STATEMENT

The Rent Regulation for Housing provides (Section 6) that landlords may not exercise their rights at local law to evict tenants from housing accommodations except on stated conditions.

Owners of stock in a cooperative corporation which owned the apartment dwelling in which petitioners resided as tenants sought from the Office of Price Administration certificates authorizing them to exercise their rights at local law to evict the petitioners. After hearings before the area rent director, of which petitioners were notified and in which they participated, the applications were denied. The denial was sustained by the regional rent administrator. A protest to the Price Administrator against these orders of denial was granted, and the requested certificates were issued. Petitioners, the tenants in possession, then filed with the Price Administrator a protest against his order granting certificates to the stockholders. The Price Administrator did not consider on the merits the allegations of the protest, but dismissed it on the ground that petitioners were not "subject to" the order in question, as required by Section 203 (a) of the Act. The petitioners filed a complaint in the Emergency Court of Appeals, claiming to be aggrieved by the failure of the Administrator to consider the protest on the merits. Upon motion of the Price Administrator, the Emergency Court of Appeals dismissed the complaint on the ground that, since the petitioners were not "subject to" the order in question, they had no standing to file a protest under Section 203 (a) of the Act, and therefore no standing to file a complaint.

ARGUMENT

Petitioners urge that the language of the Emergency Price Control Act, as amended, and the provisions of the Fifth Amendment require that they, as tenants of housing accommodations, be afforded an opportunity for administrative and judicial review of an order issued by the Price Administrator relieving their landlords of a bar imposed by the Rent Regulation against the institution of eviction proceedings and permitting the landlords to pursue whatever remedies they may have at local law for the eviction of the tenants. The issue presented is important in that a holding in favor of petitioners would increase the burden of administering the Act manyfold. We believe, however, that consideration of the statutory and regulatory system of rent and price controls demonstrates that the conclusion of the Administrator and the court below that tenants have no such right to review was clearly correct.

The Emergency Price Control Act does not itself impose any limitation on the right of landlords to evict tenants in possession of their property[1] nor does it, in terms, authorize the Administrator to regulate evictions for the purpose of avoiding inconvenience to tenants. Section 1 (a) of the Act does, of course, disclose a concern for tenants insofar as it states the purposes of the Act to be, among other things, "to stabilize

[1] Sec. 4 (b) prohibits landlords from removing a tenant because of action taken by the tenant under the Act.

prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents;" "to protect persons with relatively fixed and limited incomes * * * from undue impairment of their standard of living." But the concern here is with the price and rent level, not with eviction as such.

As Section 2 (a) of the Act authorizes the Administrator to establish maximum prices, so Section 2 (b) authorizes him, under specified circumstances, "by regulation or order [to] establish such maximum rent or maximum rents for such [defense-area housing] accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act." Section 2 (d) contains the broad grant of authority to preserve and protect by administrative action the level of prices and rents established pursuant to paragraphs (a) and (b) of Section 2. It provides, in part, that when

> in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit * * * speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

Pursuant to this authority, the Administrator has included in the Rent Regulation for Housing a section imposing certain limits on the right of landlords to remove tenants who pay their rent (Section 6). Exceptions to this general restriction are set forth in the numerous paragraphs of Section 6. The subparagraphs of paragraph (a) authorize pursuit of remedies at local law if the tenant refuses to renew a lease, unreasonably refuses access to the landlord, violates an obligation of his tenancy, or commits a nuisance; if subtenants are in possession at the expiration of the tenant's lease; or if the landlord had owned the house on the effective date of the regulation and has an immediate and compelling necessity to recover possession for his own occupancy. Paragraph (b) of Section 6 provides that no tenant may be evicted on any other grounds "unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law."

In addition to a general provision for the issuance of certificates by the Administrator when the landlord establishes that the evictions "are not inconsistent with the purposes of the Act or this regulation and would not be likely to result in the circumvention or evasion thereof," provision is made for the issuance of certificates to permit occupancy by the purchasers of housing accommodations (Section 6 (b) (2)), and specifically

for the purchasers of stock in a cooperative corporation (Section 6 (b) (3)). It was under this latter provision that the Administrator issued certificates to purchasers of stock in the apartment building in which petitioners were living.

The procedure governing applications for eviction certificates, and proceedings for changes in rents under the numerous individual adjustment provisions in the Rent Regulation (Section 5 (a), (b), (c)), is established in detail by Revised Procedural Regulation No. 3 issued pursuant to Section 203 (a) of the Act. As required by the procedural regulation, the purchasers filed their applications on appropriate forms with the director of the defense-rental area in which the property was situated (Sections 1300.202, 1300.203). The duties of the area rent director are set forth in Section 1300.206:

> *Investigation of petitions and applications.*—Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

To aid the director in disposing of the application, copies of the forms filed by the landlords

were mailed to the tenants, in this as in other types of cases, advising them that they might submit any information they desired in connection with the matter. As authorized by Section 1300.208 of the Procedural Regulation, the area rent director caused an oral hearing to be held for the taking of testimony, during the course of which evidence was presented by the petitioners. After denial of the application by the area rent director, it was reviewed by the regional administrator (Section 1300.209) who sustained the denial. The purchasers then filed a protest with the Administrator (Section 1300.216) who, after due consideration, granted the protest and issued the certificates.

Thereupon, the tenants involved, the petitioners here, filed a protest against the order of the Administrator granting the certificates. This was dismissed on the ground that the tenants were without standing to protest. This action was clearly required by the procedural regulation. Section 1300.215 provides that a landlord subject to a provision of a maximum rent regulation or order may file a protest, and that a landlord "is * * * subject to a provision of a maximum rent regulation or of an order, only if such provision prohibits or requires action by him."[2]

[2] The quoted clause first appeared as Sec. 1300.215 of Revised Procedural Regulation No. 3, issued January 12, 1943, 8 F. R. 526. As originally issued on May 25, 1942 (7 F. R. 3936), Procedural Regulation No. 3 did not contain the quoted clause, but authorized protests to be filed only by landlords (Sec. 1300.208). A clause substantially identical to

The court below observed that the administrative definition of the statutory phrase granting the right of protest to persons "subject to" a regulation or order (Sec. 203 (a)) had been subjected to some qualification (R. 75). The Administrator in revising Procedural Regulation No. 1, applicable to maximum price regulations, included a provision that producers of agricultural commodities should be considered subject to a maximum price regulation for the purpose of asserting any right created for the benefit of producers by Sec. 3 (c) of the Act. And in *Illinois Packing Company* v. *Snyder*, 151 F. 2d 337 (E. C. A. 1945) the Emergency Court of Appeals, after holding that subsidy regulations issued under the authority of Section 2 (e) of the Act were regulations or orders under Sec. 203 (a), concluded that a person claiming to be arbitrarily discriminated against by such a regulation was "subject to" it within the meaning of Sec. 203 (a). The nature of the circumstances involved in these departures emphasizes, however, the lack of basis for holding that tenants are authorized to protest. In Section 3 (c) of the Act producers of agricultural commodities were afforded protection to their substantive interest against the possibility that price ceilings on

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the quoted clause appeared in Procedural Regulation No. 1, dealing with maximum price regulations, as originally issued February 12, 1942 (7 F. R. 971, Sec. 1300.9), and has been retained.

processed agricultural commodities would be used to depress the prices of unprocessed agricultural commodities below the minimum price levels which Congress sought to preserve. Processors would not necessarily have an interest in protecting the level of farm prices, and the Administrator's obligation to control the price level generally might create some conflict with the protection the statute sought to afford. Opportunity was therefore given to the persons directly affected to seek administrative review leading to judicial review. Similarly, once it was determined that a subsidy program under Section 2 (e) was a regulation or order within the meaning of Section 203 (a) of the Act, it became necessary to permit the persons whose economic interests were directly affected to seek review.

But the two foregoing situations are wholly different from the general pattern of relationships created by the Act. The Congress entrusted to the Price Administrator the responsibility for holding down prices and rents to prevent inflation with its train of evils and conferred broad powers upon him to achieve that purpose. In exercising those powers, the Administrator imposes restrictions primarily upon those who sell goods and rent housing accommodations. Since sellers and landlords are prohibited from doing certain things by price and rent regulations, their right to administrative and judicial review of orders and regulations governing them is clear. Both the

language of the Act which confers the right to protest and the administrative interpretation of this language protect this basic right. The natural meaning of "subject to" does not extend, however, to one who, like the petitioners, is not under administrative restraint. In this case the order which petitioners seek to protest does no more than relieve their landlords of a restraint otherwise imposed by the regulation; it adds nothing to the rights of the landlords to the possession of their property.

The use of the narrow phrase "subject to" in contrast to the broader customary language of party "affected"[3] or "aggrieved"[4] in defining the persons who should have the right of protest and of judicial review is a strong indication that it was not intended to empower buyers and tenants to test judicially the propriety of price or rent increases or other action relaxing controls. That the language was used advisedly appears from the Senate report which accompanied the original bill, in which it was stated that—

> Section 203 (a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious de-

[3] See, *e. g.*, Walsh-Healey Act, 49 Stat. 2036, 2038, Sec. 5, 41 U. S. C. 39; Federal Communications Act, 48 Stat. 1064, 1093, Sec. 402, 47 U. S. C. 402.

[4] See, *e. g.*, Federal Power Act, 49 Stat. 838, 860, Sec. 213, 16 U. S. C. 825 (*l*). Cf. *United States* v. *Public Utilities Commission*, 151 F. 2d 609 (App. D. C.).

terminations, to all persons who are required to obey the provisions of regulations or orders under section 2. [S. Rep. No. 931, 77th Cong. 2d sess., p. 22.]

Furthermore, when the renewal of the Act was under consideration in 1944 and 1945 proposals were made to the Congress for broadening the class of persons who might protest.[5] The proposals were rejected.

There can be little doubt, in view of the foregoing, that the Congress did not intend to make the Administrator a judge in a contest between seller and buyer or landlord and tenant whenever prices or rents were to be raised or other restraints removed or relaxed. The plan of the statute as a whole indicates that the public interest in protecting the community as a whole from the dangers of inflation was entrusted to the Administrator, and that the right to seek judicial review of his actions was to be limited to those upon whom the regulatory restraints bore directly.

Petitioners urge, however, and the dissenting judge below concluded, that the failure to allow these petitioners the right to seek administrative

[5] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d sess. on S. 1764, pp. 474, 1304, 1325, 1330, 1367, 1474; Hearings before the House Committee on Banking and Currency, 78th Cong., 2d sess. on H. R. 4376, pp. 449, 495, 568. Hearings before Senate Committee on Banking and Currency, 79th Cong., 1st sess. on S. J. Res. 30, p. 452.

and judicial review would result in a deprivation of their constitutional rights under the Fifth Amendment. This argument rests upon the premise that the statute created in tenants a right to maintain possession of property rented by them. We submit that this premise is clearly erroneous. Its unsoundness is shown by what has just been said as to the essential character of the statutory pattern: the importance of a general duty upon the Administrator to prevent inflation from occurring, rather than the creation of a multitude of rights in individual consumers and tenants to the maintenance of particular prices or rents or other restraints. This view is reinforced by the fact that, under Section 4 (a) of the Act, tenants are not subject to sanctions for paying in excess of the prescribed maximum rents.

That the statute does not create in tenants the right to continued possession is also demonstrated by the derivative nature of the regulatory provisions concerning evictions. As is pointed out above, the Act does not authorize the Administrator to restrict evictions for the sake of preserving tenants in possession, but merely authorizes him to control evictions to the extent necessary to protect the structure of maximum rents. See *Taylor* v. *Bowles*, 145 F. 2d 833 (ECA, 1944). While this purpose may justify a sweeping control over evictions—and conceivably in some circumstances a complete prohibition

(Cf. *Gemsco, Inc.* v. *Walling*, 324 U. S. 244)—the derivative nature of the power prevents its being construed as creating rights in particular tenants. In the absence of such rights, there is no constitutional difficulty in the way of accepting what clearly appears to have been the intention of the Congress in establishing the review provisions of the Act.

Petitioners also urge that because they participated in the proceedings before the area rent director, they became parties to the proceeding and therefore acquired a constitutional right to be heard before the Administrator acted favorably to the landlords. This argument stems from the previous one and must fall with it. If petitioners were not asserting any legal rights of their own, their status in the proceeding was essentially that of witnesses. Indeed, while Revised Procedural Regulation No. 3 provides that tenants may file applications for reductions in rents (Sec. 1300.205, Rent Regulation for Housing, Sec. 5 (c)), it also provides that action on such an application shall be in the discretion of the rent director and that the procedure shall be the same as in proceedings initiated by the rent director. It may be observed that if tenants otherwise have no right to protest, their interests and the effective administration of the Act would be seriously jeopardized by a holding that they acquired such a right merely by being allowed to appear to present relevant evidence. For the

Administrator would be confronted with the alternatives of denying himself access to an important source of information or assuming a new administrative burden of great magnitude.

We submit, therefore, that the statute reasonably construed did not authorize petitioners to file a protest, and that no constitutional doubts are created by thus construing the statute.

CONCLUSION

The decision below is correct, and there is no warrant for further review. The petition should therefore be denied.

Respectfully submitted,

J. HOWARD MCGRATH,
Solicitor General.

RICHARD H. FIELD,
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Office of Price Administration.

APRIL 1946.

APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Extension Act of 1944 (58 Stat. 632), (50 U. S. C. App., Supp. IV, 901 et seq.) are as follows:

* * * * *

SEC. 2. (b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommoda-

tions, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. * *

* * * * * *

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

SEC. 4 (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of

trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

SEC. 203. (a) *At any time after the issuance of any regulation or order under section 2, or in the case a price schedule, at any time after the effective date thereof specified in section 206,*[6] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in sup-

[6] As amended by sec. 106 of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

port of such objections.[7] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[8] the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the

[7] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[8] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court

shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

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